



WellnessCast™ Conversation with Professor Ron Tyler, Associate Professor and Director of the Criminal Defense Clinic at Stanford Law School

Musical Opening: So ring the bells that still can ring. Forget your perfect offering. There is a crack in everything. That's how the light gets in. [Leonard Cohen, *Anthem*]

Joe Bankman: Welcome to the WellnessCast™. I'm Joe Bankman, professor at Stanford Law School and also a psychologist. My partner in these podcasts is Sarah Weinstein, lawyer turned therapist and external director of the Wellness Project here. Our guest today is Ron Tyler, associate professor at Stanford Law School and Director of the Criminal Defense Clinic here. Ron came to Stanford after 22 years working as a public defender. Ron uses mindfulness-based and self-care techniques to help students and others deal with burnout, and that's what we're going to talk about today. Sarah, burnout is a big deal in Silicon Valley with its high-tech community. It's also a problem for anybody with an emotionally draining job. A doctor, a school teacher, cop, and, of course, a lawyer.

Sarah Weinstein: Yes, absolutely. When I think of lawyer burnout, I think about it in three categories. The first would just be exhaustion, sheer physical and emotional exhaustion from the volume and the pressure. The second is people have a feeling of detachment or disconnection, and that can happen for a number of reasons. And the third one is just sort of not feeling any pride, or no feelings of accomplishment in your work anymore. I think of that with junior associates in particular. Where they're working, there's a lot of volume but not a lot of challenge anymore, like a document review, or when they're assigned to a discrete thing on a very large case. So that's how I see burnout in my practice.

Joe Bankman: Yeah, I guess it comes up a lot of ways, and I'm also guessing a lot of listeners have jobs that have nothing to do with law or working at a high-tech firm, but identify with the problem of burnout and pressure at work.

Sarah Weinstein: Yes, one of the factors that I think has changed over time and that seems to be contributing a great deal to the burnout we see now is just having to be available 24/7 because of e-mail.

Joe Bankman: I agree, Sarah, and with that I want to welcome our guest. Welcome to the WellnessCast™, Ron.

Ron Tyler: Thank you. I'm really grateful to be here.

Sarah Weinstein: Hi Ron, I want to welcome you also. Thanks so much for talking with us. One of our goals for the podcast is to normalize the difficult emotions we all experience, and usually we ask our guests to share a hard moment with us. I recall the first time you and I spoke, you shared with me a very difficult experience you had in your very first day in the public defender's office, very early in your career. I wonder if you would share that with us.

Ron Tyler: Sure. Even now I get a little tightness in my stomach when you ask me the question, and I think back on that. It was amazing to me because after law school and a clerkship, I was full of ideas about what it would be like to be a public defender. I watched folks who were doing the work that I was about to do while I was a law clerk, but there was nothing like the experience of actually diving in and doing it. That first day, I was immediately responsible for cases. I was the attorney on duty. There was another attorney who was with me, so that was great, somebody who was an experienced attorney to help, but none of that changed the fact that I had this dramatic ... the dramatic impact of that experience.

I met a woman who was being accused of importing heroin into the country, and as I read the affidavit in support of the complaint, it became immediately clear to me that this was a very extensive investigation that had been going on for years really, and that the weight of the evidence, at least if it was to be proven, was going to really be devastating for this young woman. First and foremost, the problem was she was in custody. She was not going to get out of custody, certainly not that day. We sat there in the lockup and she was pleading with me. She was explaining to me that she was a new mother. She had a child who was still breastfeeding, a child who as I recall was only a couple of months old, and she was like, "I have to get out, I have to be with my baby. What's going to happen to my baby?"

And it was so overwhelming to me as I began to think, "What can I possibly do for this woman?" In that moment, I knew that I couldn't get her out of custody that day, that wasn't going to happen. The way that the Bail Reform Act worked, that was not going to happen. The government had the right to ask for at least three days just to prepare for the hearing, and because of the nature of the charges, there was a presumption against her release. That was just devastating to me, and I had to tell her that, and I remember later that morning going back to my office and I just crumbled. The attorney who had been with me was

standing there, and I just started crying. I said, "I can't do this, I can't do this work."

Joe Bankman: That's a woman who might lose that child.

Ron Tyler: That was my fear, absolutely, that the child would go to ... In fact the child was already in child protective services, and she was facing potentially a mandatory minimum of 10 years in prison. So, yes, I really felt like her life and her daughter's life were changing forever, and would I really be able to change that?

Sarah Weinstein: My heart's even beating fast just hearing that, and I am at a much greater distance than you were. How did you get through that, how did you manage?

Ron Tyler: In the moment I managed because the attorney who was with me was sympathetic, was supportive, said to me, "These feelings that you're having are exactly the reason why this is the perfect ... why you are doing this work, why we need you doing this work. You can do this." And that's the first thing that I needed to hear.

Joe Bankman: Wow, that's really moving.

Sarah Weinstein: Yeah.

Joe Bankman: Ron, you're going to talk to us, I know, about self-care, but first fill us in on some of the other pressures a criminal lawyer, and a public defender in particular, might face. You've already told us about one, you're the bearer of bad news. What are some of the others?

Ron Tyler: Right, when I think about the different pressures that I experienced, and when I think about the pressures that attorneys were dealing with in particular, the kind of work that I did and that I still support, and I think, yes, about the pressure of ... the responsibility of defending someone against the vast power of the government with all of its resources, I think about the pressure not only of those individual cases but how that is multiplied tenfold or a hundredfold or more because of the caseloads that too many public defenders encounter in the state systems around the country. It can really become impossible for an attorney to practice at the level that she really wants to. There is the pressure of the daily battles against every other member of the criminal justice system, not just prosecutors but judges, bailiffs, probation officers, court officials. There's the pressure of navigating the expectations of every client and of every client's loved ones, and the pressure just to maintain some sort of semblance of work-life balance, that is magnified by that career choice of being a public defender, because at times it means that you don't feel well-supported by your friends and sometimes not even by your loved ones.

Sarah Weinstein: Wow, that list of challenges is quite sobering. People often ask me what it's like to be a therapist, and whether I sometimes take my clients' emotions or their

challenges home with me, and is that hard? Sometimes it can be, but hearing that list you just gave of what public defenders are taking on, that really puts in perspective what I'm taking home with me. As I said, that's quite sobering.

So Ron, I know you've come up with classes to help students and lawyers cope with these many stressors. Can you tell us a little bit about those classes?

Ron Tyler: What I do is I teach mindfulness in a number of different settings. First and foremost, I teach it as part of a series of self-care sessions that are integrated into my Criminal Defense Clinic here at the law school. I also offer single-session self-care workshops in continuing legal education seminars around the country. In addition to that, I have taught multiple sessions of mindfulness courses for public defenders, prosecutors, and judges in Santa Clara County in collaboration with other mindfulness teachers. So that's sort of the overview anyway.

Joe Bankman: Ron, take us to one of these classes. I'm a student, say, in your law clinic. I'm going to start out and I'm going to have to give the same kind of bad news to a client that you just told us about. How do you help me deal with that?

Ron Tyler: The way that I help you deal with it is ... these self-care sessions, the overall goal is to give students the tools so that they can be more resilient, so that they can be less susceptible to stressors that are going to come up even just during a 12-week quarter in the clinic. So each session that they attend in these self-care sessions include a period of quiet reflection at the beginning of the session, really seated meditation. Then I introduce specific instructional material. So one such session would be on breaking bad news, where I will provide them with information about how doctors for example are trained on breaking bad news to patients, attorneys oftentimes don't receive that training, but now these students are receiving that training.

Giving them specific suggestions, like beginning such a session by giving a warning shot, telling the client, "You know, I have some difficult news to share with you. Remember we talked about this motion that I filed before the court, and how it was really going to be hard to get the judge to do what we want. Well, unfortunately he hasn't." Something like that. So I introduced the instructional material, and then after they get that instructional material, I invite them to reflect on a positive experience that they've already had where they used the skill that was just introduced to them. The notion being that they actually already have some self-efficacy in that area, which I invite them to reflect on, and then after they've reflected individually, I invite them to do so in a pair, some paired sharing. And then finally we talk about it all in a group setting. That's an example.

Joe Bankman: We've really all done that. We've all had to break bad news, and one of the things you start off with doing is think of the time you've already done that, and how that went.

Ron Tyler: That's right, exactly, and what I really love about that is that it really, for each of the students, gives them that opportunity to do that. Some of the times I think in law school or in school in general, some students have a tendency to maybe hide it. There's a sense of competitiveness or one-up-ness or something like that. Instead, to give people a chance for a quiet reflection and then doing things in pairs really gives everybody the opportunity to share those successes, so I think what I found in observing the students is that there is a lightness that comes into the room. Even oppressive topics like breaking bad news or dealing with suffering, where we talk about how different clients come into the attorney-client relationship with mental illness or with drug abuse, or things of that sort, and in spite of those heavy areas, when you invite students to look at their past successes, it really starts to lift that and they begin to see, "This is something I can do, because I'm already doing it."

Joe Bankman: Sarah, I'm wondering as I hear Ron say this, if you use this in therapy? Because I sometimes work with clients to think of their past successes in an area that's difficult for them.

Sarah Weinstein: Yes, I started using this with some of the physicians I work with, not yet with the lawyers, but with the doctors. I have quite a lot of doctors in my practice, and what I've found with them is that over time, they achieve a sense of accomplishment where they are experts at everything, and then people only focus on what did not go well. So on a daily basis they're just not even thinking about all of the amazing things that they did. So, at the end of every session I usually have them tell me two things that went well, and we talk about it in detail. I kind of just came upon that randomly but it's one of the most helpful things that I do with my physicians. So I'm just glad to hear that you're introducing all of this to the law students in the criminal defense work.

Joe Bankman: Is there a role play dimension there?

Ron Tyler: There's not a role play dimension during the self-care sessions because we're not inviting the student to stand in the shoes of their client-

Joe Bankman: Yes.

Ron Tyler: During the session itself. Certainly there are moments during the clinic where we are definitely doing role-play. An aspect of the clinic is focused on clients' inner representation and the notion that you must adopt the client's worldview. There is a technique called 'parallel universe thinking' that we use in order to invite the students, at those times when they're feeling most judgmental about a client, to think, "What are the other reasons, what are the positive reasons, for the behavior that might be coming at me from this client rather than a long list of things that I think of first and foremost?" So in that sense, there is role-playing involved. Some of the times we use psychodrama, specifically in order to say, "All right, let's have a seat. I'm going to now take on the role of the client," or in fact what we'll do is substitute, I'm sorry. I'll say, "I'll take on your role. I'm going to be you. Now you be your client, and we're going to have a conversation

now. Think about you telling me ... Don't say to me, 'This is what my client would say.' Instead, be the client." They'll do that and it is a lot of fun, and they get insights.

Joe Bankman: I'm thinking, I originally asked the question, I was thinking about it from the other side, like role-playing how do they break bad news. But I think your answer's even more interesting, you could role-play both sides of it and you might learn more role-playing the other side.

Ron Tyler: That's right, that's right. And yes, we definitely, in supervision in the clinic, we are often role-playing. So whether it's about bad news, any aspect of the attorney-client relationship that a student is struggling with, we may sit together in a supervision session and say, "All right, let's moot it right now." Then oftentimes, yes, I'll be the client and I'll say, "Let's try it out, then. Go ahead, you're going to have to talk with your client about the fact that what they wanted is not going to happen. Let me hear you do a bit, and I'll respond in the way that I think a client might respond based on what you say."

Joe Bankman: How useful do the students find that?

Ron Tyler: They find it very useful, both because they hear something ... I'll ask them afterwards, I will say, "Did you notice anything about the interaction? Were there red flags? Were there ways that my expression changed? Were there word choices I started to use? Are there things you noticed that you could now, based on that, change how you'll approach this when you talk with your client?" Yeah, so it definitely helps.

Sarah Weinstein: That judgment piece that you spoke about is so interesting, and I would expect from the client side of it too, to have a law student or a lawyer who has thought about that ahead of time, would feel very very good and maybe it's not something the client had experienced. I hadn't thought so much about that judgment issue, but it seems like a very big deal in this context.

Joe Bankman: I'm thinking role-playing can be so important in general for our listeners, for difficult things they have to say, to be able to hear themselves. Both because it will give them a sense of efficacy often, they'll see they can say it, and also it will give them an opportunity to hear what comes across as unconvincing.

Ron Tyler: That's right, that's right, and I think that oftentimes our students ... for all of us I guess, or speaking for myself anyway ... we spend so much time in our heads that until we actually are engaged in the event, we don't know how it's going to come across, we don't know how effective or not it's going to be. So to get to invite them into that moment, but in advance rather than instead they have to come back and say, "Well, that didn't go so well," instead to invite them to have a pseudo experience in advance can really make a difference.

Sarah Weinstein: Yes, and what do you think, with your beginning students, what do you think they find the most challenging, maybe that they're not expecting?

Ron Tyler: I think for students, the most challenging aspect is it's not like the rest of their classes, it's not that there is a single answer that is quote "the right answer." They have to instead be willing to step into the ambiguity of the situation, and also to trust that with some advanced thought and then with being present in the moment in a conscious way, that they're going to be alright. Too often they'll just say, "Just tell me what to do, tell me what actually to do." I can give you some suggestions, but in the end, we're going to have to just go through it. You're going to have to go through it, and then we'll see.

Sarah Weinstein: That's actually very similar to my therapy sessions. That's what my clients really want is for me to tell them what to do, but sometimes you just have to go through it. I like that.

Joe Bankman: We have to act for ourselves in the moment, we can't follow a script. Ron, you have a saying to help us with this, "Notice, let go, and begin again." Can you talk about that?

Ron Tyler: Yes. That trilogy is really a gift from meditation, and it's something that students hopefully begin to recognize over time, because, as I said, the self-care sessions include meditation. I don't always ... especially early in those sessions I won't even call it meditation. Sometimes people have some resistance to the notion that they are meditating. It reminds me of a Law Review article that Rhonda Magee, a professor at the University of San Francisco has called, "*Teaching Lawyers to Meditate?*" So there can be some skepticism, so instead I'll just tell them, "We're going to have a period of quiet reflection, and during that period of quiet reflection, I want you to notice your breathing. That's what I want you to focus on."

And in focusing on the breathing, what can happen is at a certain moment, you'll notice that you're not focusing on your breathing anymore. And that's when the magic begins, is what you do with that moment. Do you judge yourself and say, 'I'm a bad person, I'm a bad meditator, I'm not following the instructions'? Or instead you simply notice that you're not breathing, notice whatever is going on, and then let go. Let of the judgments about yourself. Let go of that other thing that you were doing, and begin again with the focus, which is to say begin again with just paying attention to your breathing."

This triplet of notice, let go, and begin again, has broader implications for everything that we can do, and so if I have a student who needs to be focused on, "How can I be a better cross examiner?" And they're in the middle of their cross-examination and they notice it's not going well, the witness is fighting with them. They get to decide in that moment, again, what's happening, why is it happening, how do I feel about myself in this moment, can I let go of those things and just return to what I know to be effective cross-examination? That

can seem like a mundane example, but really this notice, let go and begin again, to me, is a gift for everything that we can do in life.

Joe Bankman: That's so well put.

Sarah Weinstein: Yes, it's so well put and I'm also so glad that you're introducing these concepts early to the students, and it reminds me of one of my favorite quotes. It's by Gordon Hempton who is an audio ecologist, and he says, "Silence is the think tank of the soul." That always ... that just resonated with me from what you said also.

We like to sign off by asking our guest about a wellness practice that you use to thrive in your own life and career, but before we do that, I just want to check in, Joe, about our technique from last time from our Stanford sleep expert Doctor Norah Simpson. She said she finds it very important to schedule downtime for herself where the goal is to do nothing productive. Joe, I know how many projects you have going on at once. You're a tax law professor, psychologist, your podcasts, your writing, I know you even like to cook. Do you even like downtime? Did you try this suggestion?

Joe Bankman: I do have downtime, Sarah. I ride my bike everywhere, and sometimes I just go out for a bike ride without a destination in mind. When you're on a bike, there's nothing to it but being in the moment. How about you, Sarah?

Sarah Weinstein: I am a very hard worker but I'm not a workaholic, and I love my downtime. I like to go to the movies alone, which some people find strange. I like to go to concerts, I spend time with my son. Yes, this is not a problem for me. I have no problem scheduling downtime, but Ron, how about you? Do you have a wellness practice that you can share with our listeners, something that really helps you thrive?

Ron Tyler: I have a number of them, but the practice that comes most immediately, to mind which is one of my favorites at the moment, it's called 'three good things'. It's a practice that really comes from positive psychology. It's a practice that I picked up from UC Berkeley's Greater Good Science Center, and it's really pretty simple. The idea is to ... and it's something you do in writing. It's again about getting outside ... getting out of your head. The idea is to, at the end of the day, think back on your day and identify three things that happened during the day that were actually good. Write them down in as much detail as you can, write down why it is that you think these good things happened, right down how you were feeling while these good things were happening, and also write down how you feel now as you're recalling them. Empirical study shows that if people engage in that behavior even for as short a time frame as a single week, that it actually increases their happiness for a much longer period of time. I think one study showed increases in happiness that continued for six months. So this three good things practice is one of my new favorites actually.

Joe Bankman: I give a variant of that gratitude thing to my clients, and Sarah, you've told us you do the same with your physician clients. The Berkeley Greater Good Science Center has a lot of good stuff on it, and if our listeners googled it, they'd find it, and maybe we can put it up, Sarah, on our web page.

Sarah Weinstein: Yes, absolutely. If anyone would like to access the resources from this podcast ... and I know we're going to have an article from you, Ron, on there ... you can do that at www.law.stanford.edu/wellnessproject.

Joe Bankman: Ron, it's been so great having you. This was so fun.

Ron Tyler: It's ending all too soon but, again, I'm really grateful for the time. Thanks.

Sarah Weinstein: Yes, thank you so much for being here, Ron. It was such a pleasure.

That concludes our show for today. Thank you so much for listening and please tune in next time for another episode of the WellnessCast™.